

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

JOSE RIVERA,

Appellant,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

Case No. ALLO-99-0009

ORDER OF THE BOARD FOLLOWING
HEARING ON EXCEPTIONS TO THE
DETERMINATION OF THE DIRECTOR

Hearing on Exceptions. This appeal came on for hearing before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; GERALD L. MORGEN, Vice Chair; and NATHAN S. FORD JR., Member, on Appellant's exceptions to the Director's determinations dated April 5, 1999 and April 15, 1999. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on September 8, 1999.

Appearances. Appellant Jose Rivera was present and appeared *pro se*. Respondent Department of Transportation (DOT) was represented by Carol Bogue, Personnel Officer.

Background. On February 18, 1997, Brenda Richardson, Director of the Office of Equal Opportunity, requested assistance from the DOT Personnel Office to reallocate Appellant's Affirmative Action Officer 2 position. DOT did an informal review of Appellant's position using a Classification Questionnaire (CQ) signed by Ms. Richardson on February 18, 1997. By letter dated April 16, 1997, April Thompson of the DOT Personnel Office, denied the request. Appellant did not request a formal review of his position.

1 On May 4, 1998, Ms. Richardson again requested assistance from the DOT Personnel Office to
2 reallocate Appellant's position. DOT did an informal review of Appellant's position and denied the
3 request. On August 10, 1998, Appellant formally requested reallocation of his position. Carol
4 Bogue, of the DOT Personnel Office, reviewed Appellant's position using a revised CQ that was
5 submitted to the DOT Personnel Office on August 17, 1998. By letter dated August 31, 1998, Ms.
6 Bogue denied Appellant's request for reallocation.

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8 Appellant appealed to the Director of the Department of Personnel. The Director's designee, Mary
9 Ann Parsons, conducted an allocation review of Appellant's position. By letter dated April 5, 1999,
10 Ms. Parsons determined that, based on Appellant's August 17, 1998 CQ, Appellant's position
11 should be reallocated to the Affirmative Action Officer 3 classification, effective August 10, 1998.
12 Appellant contacted Ms. Parsons by telephone on April 14, 1999, regarding the effective date of his
13 reallocation. Ms. Parsons reviewed Ms. Bogue's August 31, 1998 letter to Appellant. By letter
14 dated April 15, 1999, Ms. Parsons corrected the effective date of Appellant's reallocation to August
15 19, 1998.

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17 On April 28, 1999, Appellant filed timely exceptions to the Director's determination regarding the
18 effective date of his reallocation with the Personnel Appeals Board. Appellant's exceptions are the
19 subject of this proceeding.

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21 **Summary of Appellant's Argument.** Appellant contends that under the provisions of WAC 356-
22 10-050(6), his reallocation should be effective on the earliest date that his CQ was received by
23 DOT's Personnel Office. Therefore, Appellant argues that his reallocation should be effective
24 February 18, 1997, the date that Ms. Richardson first requested reallocation of his position and
25 submitted his CQ to personnel.

1 **Summary of Respondent's Argument.** Respondent argues that under the provisions of WAC
2 356-10-050(6), Appellant's reallocation should be effective on the earliest date that DOT's
3 Personnel Office received the CQ. Respondent contends that Appellant did not request a formal
4 review of his position based on the February 1997 CQ. Therefore, Respondent asserts that
5 Appellant's reallocation should be effective on August 19, 1998, the date that the DOT Personnel
6 Office received the revised CQ upon which Appellant's reallocation was based.

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8 **Primary Issue.** Whether the Director's determination of August 19, 1998 as the effective date of
9 Appellant's reallocation should be affirmed.

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11 **Relevant WACs.** WAC 356-10-050.

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13 **Decision of the Board.** In an allocation review, the decision is based, in part, on the CQ that is
14 submitted for the review. Chau v. Employment Security Dep't, PAB No. ALLO-98-0018 (1998).
15 Allocation decisions should be based on the CQ in place at the time of an employee's request for
16 reallocation. Elling v. Dep't of Ecology, PAB No. ALLO-98-0017 (1998).

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18 Appellant did not formally request a review of his position until August 10, 1998. The CQ that was
19 submitted for Appellant's formal position review was received in the DOT Personnel Office on
20 August 19, 1998.

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22 WAC 356-10-050 provides in relevant part:

23 Employees in positions that have been reallocated upward are affected as follows:

24

25 (6) For positions reallocated by agencies under their delegated
26 allocation authority, the effective date of an incumbent's appointment status as
provided for in subsection (2) or (5) of this section will be the earliest date that a

1 copy of the classification questionnaire is received by the agency's personnel office
2 or by the department of personnel.

3 Therefore, pursuant to the provision of WAC 356-10-050(6), the effective date of Appellant's
4 reallocation should be August 19, 1998.

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6 **Conclusion.** The appeal on exceptions by Appellant should be denied and the Director's
7 determination of the effective date of Appellant's reallocation should be affirmed and adopted.

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9 **ORDER**

10 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Appellant is
11 denied and the Director's determination of August 19, 1998, as the effective date of Appellant's
12 reallocation to Affirmative Action Officer 3 is affirmed and adopted.

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14 DATED this _____ day of _____, 1999.

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16 WASHINGTON STATE PERSONNEL APPEALS BOARD

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18 _____
Walter T. Hubbard, Chair

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Gerald L. Morgen, Vice Chair

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22 _____
Nathan S. Ford Jr., Member

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Personnel Appeals Board
2828 Capitol Boulevard
Olympia, Washington 98504